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GENERAL COUNSEL DIVISION

August 1, 2005

Public Utility Commission of Oregon
Attention: Filing Center
550 Capitol Street NE, Suite 215
P.O. Box 2148
Salem, OR 97301-2148

Re: *In the Matter the Public Utility Commission of Oregon Staff's Investigation Relating to Electric Utility Purchases from Qualifying Facilities*
UM 1129
DOJ File No. 330-020-GN0041-04

Enclosed for filing are the Comments of the Oregon Department of Energy for the Oregon Public Utility Commission meeting of August 2, 2005.

Sincerely,

Janet L. Prewitt

Janet L. Prewitt
Assistant Attorney General
Natural Resources Section

c: Phil Carver, ODOE
UM 1129 Service List

JLPjlp/GENN4289

BEFORE THE PUBLIC UTILITY COMMISSION
OF OREGON
UM 1129

In the Matter of

PUBLIC UTILITY COMMISSION)
OF OREGON)
)
Staff's Investigation Relating to) COMMENTS OF THE OREGON
Electric Utility Purchases From) DEPARTMENT OF ENERGY
Qualifying Facilities)

The Oregon Department of Energy (ODOE) supports Staff's recommendation that the Commission allow the standard contract forms and revised tariffs submitted by Idaho Power (IP), Portland General Electric (PGE) and Pacific Power & Light (PPL) go into effect subject to investigation and refund. ODOE agrees with staff that the proposed contracts are a significant improvement over the former contracts. However, ODOE also believes that certain provisions in the proposed standard contracts are inconsistent with the letter and spirit of Order 05-584 and that the avoided costs submitted by the utilities require investigation into the reasonableness of the natural gas price forecasts used by the utilities. ODOE offers the following comments in support of Staff's recommendation. These comments are intended only to be illustrative of the types of issues that should be reviewed in the Commission's investigation.

Determination of "Contracted for" Amount

Although Order 05-584 permits the standard contracts to allow recovery of excess payments in the event the utility must replace the "contracted for" energy, the Order does not specify how the "contracted for" energy is to be determined. The applicable terms in the proposed standard contracts require QFs to predict minimum monthly and annual energy production, which invites extended negotiations and is project-specific.[1] As discussed below,

[1]PGE § 4.3
PPL: Agreement, § 4.3, § 7, and Exhibit D-1, IP§ 6.2

failure to deliver these amounts is a default under the standard contracts. Such terms are inconsistent with Order 05-584.

For example, the standard contracts do not take into account that a deficit could be solely the result of the intermittent resource being less than predicted. The Order requires that firm and intermittent resources should be valued equally" and directs utilities "to pay full avoided costs pursuant to the appropriate methodology for all energy delivered under a QF standard contract . . .." Order 05-504, p. 45. As currently drafted, the contracts invite the QF's to deliberately underestimate project output in order to avoid triggering the default provisions.[2]

Default and Termination

As noted above, the contracts improperly penalize intermittent resources for under-deliveries that are due to weather. In addition, PGE and PPL proposals[3] provide that the contracts can be terminated for delivery below minimum requirements. The Order does not explicitly provide for termination for under-delivery.[4]

The proposed standard contracts[5] also provide for termination if the QF is delayed in producing power. However, Order 05-584 explicitly provides for default damages in such an event: If the utility is in deficit, the utility may reduce payments by the difference between the contract price and the amount required to replace the energy. See Order 05-584 pp. 45, 60.

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[2] For example, there is very little reliable wind anemometer data available upon which to estimate the minimum energy to be delivered under the contracts. Yet QFs are asked to predict output based on that scanty data and face default penalties if the actual weather conditions are not consistent with the predicted conditions. In addition, the PPL contract requires that the motive force plan must be acceptable to PPL, giving the utility the power to reject a plan that it views as too conservative.

[3] PGE §10.2; PPL,11.3; 11.1.6.

[4] In fact, the Order discusses termination only in the context of the repeal of PURPA. See Order 05-584, pp. 56-57.

[5] PGE: §§ 2.2, 10.1.1.
PPL: § 11.1.5.

Creditworthiness

Several proposed contract terms covering creditworthiness require default security that is different from or in addition to that provided for in the Order. For example, the PPL contract imposes upon QFs larger than 3 MW an additional hurdle of meeting "Credit Requirements" of a long-term debt credit rating by a credit rating agency. [6] The PGE contract requires, in addition to the representations required at the time of contracting, that the QF warrant that it will remain current on financial obligations to others throughout the contract term. Failure to remain current on financial obligations requires default security. [7] Both Contracts impose additional default security requirements that are not explicitly provided in the order.[8] PPL's proposed contract requires a letter of credit for the costs of environmental remediation if the QF opts for "step-in" rights upon default.[9] These requirements present an unnecessary impediment to the potential financing of the QF.

Avoided Costs

The Opal hub gas price used by PPL in its avoided cost calculation appears significantly higher than the AECO hub gas forecast used by PGE,[10] particularly in the 2010 to 2020 timeframe. This difference cannot be explained by hub price differentials, which are minor.

It is PGE's gas price projections that seem particularly unreasonable. ODOE has calculated the PGE's real gas prices in 2005 dollars per MMBTU to be as low as $3.24 in 2010 and $3.54 in year 2016. See Exhibit 1, Naturalgas_nominal and real_prices.xls.

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[6] PPL §3.2.7(e). ODOE agrees with the Comments submitted by Douglas County Forest Products on this issue.
[7] PGE § 3.1.4 and Section 7.
[8] PGE Section 7; PPL § 10.5.
[9] ODOE does not take a position on whether a letter of credit is a good idea in this situation, but it is not currently expressly permitted by the Order. If the Commission decides to permit this requirement, it should investigate and establish a methodology for determining the amount of this letter of credit.
[10] Compare Exhibit 1, with Table 14.

These values are about half current prices and would not even pay for the hardware and operations costs of importing liquefied natural gas. It is unlikely that gas exporting countries will sell the gas for nothing.

World delivered natural gas prices will trend towards world oil prices which are currently around $10.00 per MMBTU. Oil prices are highly volatile, but a return to the prices of the 1900's seems unlikely. Natural gas prices are the primary determinate of avoided cost and require a Commission investigation.

Conclusion

For the reasons outlined above, ODOE urges the Commission to adopt the Staff's recommendation.

Respectfully submitted this 1st day of August 2005.

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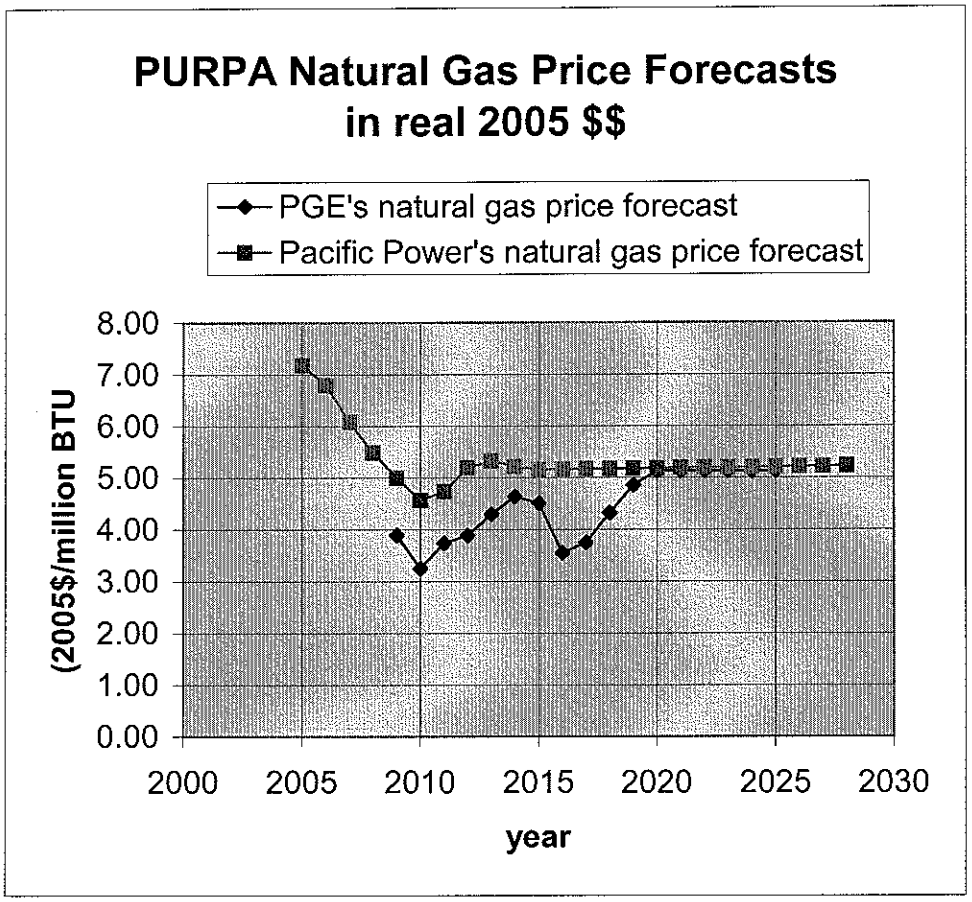
Calculation of real natural gas prices for PURPA 10 MW or less				
Nominal versus Real 2005$ Gas prices				
Nominal gas prices for PGE: Standard Contract Proposal, 7/2005				
using AECO price forecast, 2005 Avoided Cost Study, Table 13.				
Nominal gas price for PPL: Exhibit E, table 9, using Opal prices				
Gas price in dollars per million BTU				
Inflation rate	0.025			
Current year	2005			

	PGE		Pacific Power	
Year	AECO gas price	gas price	Opal gas price	gas price
	nominal $	real (2005$)	nominal $	real (2005$)
2005			7.18	7.18
2006			6.96	6.79
2007			6.38	6.07
2008			5.90	5.48
2009	4.30	3.89	5.51	4.99
2010	3.67	3.24	5.16	4.56
2011	4.33	3.74	5.49	4.73
2012	4.61	3.88	6.17	5.19
2013	5.23	4.29	6.48	5.32
2014	5.78	4.63	6.51	5.21
2015	5.77	4.50	6.60	5.16
2016	4.65	3.54	6.77	5.16
2017	5.04	3.75	6.95	5.17
2018	5.95	4.32	7.12	5.16
2019	6.86	4.85	7.31	5.17
2020	7.42	5.12	7.50	5.18
2021	7.60	5.12	7.70	5.19
2022	7.79	5.12	7.90	5.19
2023	7.99	5.12	8.10	5.19
2024	8.19	5.12	8.31	5.20
2025	8.39	5.12	8.53	5.21
2026			8.75	5.21
2027			8.98	5.22
2028			9.21	5.22


PURPA Natural Gas Price Forecasts
in real 2005 $$
PGE's natural gas price forecast
Pacific Power's natural gas price forecast
8.00
7.00
6.00
5.00
4.00
3.00
2.00
1.00
0.00
(2005$/million BTU
2000
2005
2010
2015
2020
2025
2030
year